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March 16, 2004

BY HAND DELIVERY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Ex Parte Submission in CC Docket No. 01-338: Request for Stay of Order

Dear Ms. Dortch:

Through its attorneys, Alaska Communications Systems Group, Inc. ("ACS") hereby requests that the Commission stay the July 2, 2004 deadline for states commissions to make impairment determinations pursuant to the Commission's directive in its Triennial Review Order.¹

On March 2, 2004, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision vacating much of the UNE Triennial Review Order, including the Commission's delegation to state commissions of authority to make impairment determinations.² The court also vacated the Commission's nationwide impairment determinations for mass-market switching and transport.³ As a result of the D.C. Circuit Court proceeding, at least sixteen states have stayed or suspended their Triennial Review Order implementation proceedings.⁴ Further, certain parties

¹ See *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (rel. Aug. 21, 2003).

² *United States Telecom Ass'n v. FCC*, No. 00-1012, slip op. at 18 (D.C. Cir. Mar. 2, 2004).

³ *Id.* at 20, 28.

⁴ See State Telephone Regulation Report at 2 (Mar. 12, 2004) (the following states have stayed or suspended their Triennial Review Order implementation proceedings due to the court case: Colorado, Minnesota, Nebraska, North Dakota, Oregon, Utah, and Virginia, shortly before the decision; Florida, Ohio, Wisconsin, and Washington, shortly after the decision); TR State Newswire at 1 (Mar. 11, 2004) (Arkansas, District of Columbia, Massachusetts, New Jersey,

have announced their intent to file petitions for certiorari with the U.S. Supreme Court in connection with this decision.⁵ In states where proceedings are continuing, the state commissions and the carriers are expending considerable resources trying to complete proceedings in accordance with an order that has been substantially remanded to this Commission by the court of appeals.

On March 10, 2004, ACS filed a motion for stay of the proceedings instituted by the Regulatory Commission of Alaska ("RCA") to implement the Triennial Review Order. ACS requested that the RCA stay its implementation proceedings pending a decision by this Commission to extend the July 2, 2004 deadline, or until the procedural status of the Triennial Review Order and the D.C. Circuit Court decision are resolved. A copy of ACS's motion is attached hereto.

In light of these events, ACS respectfully requests that the Commission postpone its July 2, 2004 deadline for state commission determinations of impairment pursuant to the Triennial Review Order. Given the uncertainty surrounding the Commission's authority to delegate impairment determinations to state commissions, it is an unreasonable burden to require state commissions and carriers to expend resources to implement the Triennial Review Order by July 2, 2004.

and Illinois have decided to stay or suspend Triennial Review Order implementation proceedings).

⁵ See Press Release, "NARUC Urges Administration and Congressional Leaders to Support the Immediate Appeal of The DC Circuit's Triennial Review Order," National Association of Regulatory Utility Commissioners (Mar. 8, 2004).

LATHAM & WATKINS^{LLP}

If you should have any questions regarding this submission, please contact the undersigned at (202) 637-2200.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'KB', followed by a horizontal line extending to the right.

Karen Brinkmann
Elizabeth Park

*Counsel to Alaska Communications Systems Group,
Inc.*

Attachment

cc: Chairman Powell
Commissioner Abernathy
Commissioner Adelstein
Commissioner Copps
Commissioner Martin

R.C.A.
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STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Mark Johnson, Chair
Kate Giard
Dave Harbour
James S. Strandberg
G. Nanette Thompson

In the Matter of the new Requirements of)
47 C.F.R. § 51 Related to the FCC Triennial) R-03-07
Review Order Interconnection Provisions and)
Policies)

**ACS' MOTION FOR STAY OF RCA PROCEEDINGS PENDING
FCC DECISION ON ACS' REQUEST FOR EXTENSION
OF JULY DEADLINE.**

**MOTION FOR PUBLIC HEARING TO CONSIDER ACS MOTION FOR STAY
AND**

**MOTION FOR RCA TO REQUEST FCC FOR EXTENSION OF JULY
DEADLINE**

Introduction

ACS of Anchorage, Inc., ACS of Alaska, Inc., and ACS of Fairbanks, Inc.
(hereinafter "ACS") hereby move for a stay of the current RCA proceedings in this
docket pending a decision by the FCC on ACS' request to the FCC for an extension of
the July 2004 deadline in the Triennial Review Docket, or until the procedural status of
the FCC and D.C. Court of Appeals' decisions are resolved. ACS also moves for the
RCA to hold a public hearing to consider the ACS Motion for Stay of RCA

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1 Proceedings, and further requests that the RCA also file a request with the FCC asking
2 for an extension of the July 2004 deadline for state commission findings.

3
4 ACS intends to ask the FCC for an extension of the July deadline until there is a
5 final disposition on any petition for rehearing before the D.C. Court of Appeals or until
6 resolution of any petition for certiorari to the United States Supreme Court. Until there
7 is a final disposition or resolution of these federal matters, ACS requests that the RCA
8 stay the proceedings in this docket. In addition, ACS asks that the RCA also request
9 the FCC for an extension of the deadlines set in the Triennial Review Docket until the
10 status of the FCC and Court of Appeals' decisions are clarified.
11

12 Background

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14 On March 1, 2004, the RCA issued Order No. 3, which set a procedural
15 schedule for certificated local exchange carriers to make additional data and comment
16 filings and also set a public hearing for April 15, 2004, in order to assist it with making
17 the factual findings required by the FCC's Triennial Review Order. The next day, on
18 March 2, 2004, the U. S. Court of Appeals issued its decision in *United States Telecom*
19 *Association v. FCC*,¹ which vacated most of the FCC's Triennial Review Order,
20 including the FCC's subdelegation to state commissions of decision-making authority
21 over impairment determinations, as well as the FCC's nationwide impairment
22 determinations for mass market switching and certain dedicated transport.
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27 ¹ *USTA v. FCC, USA, and Bell Atlantic Telephone Co., et al.*, Op. No. 00-1012, U.S. Ct. of
Appeals, D. C., March 2, 2004.

At this point, the interested parties here are faced with two conflicting orders: the FCC's Triennial Review Order that requires state commissions to make certain factual findings by July 2004, and the D. C. Court of Appeal's decision in *USTA*, which invalidated most of the FCC's Triennial Review Order and delegation of authority to the states to make the required factual findings. As of this date, the parties have already expended substantial time and resources in complying with the RCA's orders in this docket implementing the terms of the Triennial Review Order. If the *USTA* decision is upheld on appeal, any further efforts and expense incurred to compile the information requested in the RCA order will have been wasted. In order to avoid incurring further unnecessary expenses involved with complying with the RCA's procedural schedule, ACS move to stay the RCA proceedings in this docket until the FCC issues a decision on ACS' formal request for an extension of the FCC's July deadline, or until the final disposition of any petition for rehearing before the Court of Appeals, or a resolution of a petition for certiorari to the U. S. Supreme Court. A stay of the RCA proceedings until the status of these two conflicting decisions are clarified will not prejudice the interested parties, and will save substantial costs and conserve the personnel resources of both the interested parties and the RCA.

Conclusion

Therefore, ACS respectfully requests that the RCA expeditiously schedule a public hearing in this docket in order to consider ACS' Motion for Stay of RCA

1 Proceedings. ACS further asks that the RCA also request, by letter or separate petition,
2 a stay of the FCC July deadline in the Triennial Review proceedings.
3

4 Respectfully submitted this 10th day of March, 2004.
5

6
7 By Martha Beckwith
8 Martha Beckwith
9 Attorney for ACS of Anchorage, Inc.
10 ACS of Alaska, Inc., ACS of Fairbanks, Inc.
11 ABA No. 7705006
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